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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/750,346	12/31/2003	Gil I. Nadel	5760-14700	9474
35690 7590 07/16/2007 MEYERTONS, HOOD, KIVLIN, KOWERT & GOETZEL, P.C. P.O. BOX 398 AUSTIN, TX 78767-0398				
			EXAMINER ROSE, HELENE ROBERTA	
			ART UNIT 2163	PAPER NUMBER
			MAIL DATE 07/16/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/750,346	Applicant(s) NADEL ET AL.	
	Examiner Helene Rose	Art Unit 2163	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 May 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Detailed Action

1. In view of the **Appeal** Brief, filed on 5/2/2007, **PROSECUTION IS HEREBY REOPEN**. New grounds of rejection are set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

2. No claims were added, cancelled, or amended. Therefore, Claims 1-25 are presently pending examination.

Claim Rejections – 35 U.S.C – 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1-25 are rejected under 35 U.S.C. 102(e) as being anticipated by Vos (US Patent No. 6, 944, 630, Date Filed: November 21, 2001).

Claims 1,9, 17, and 25:

Regarding Independent Claims 1,9, and 17, and 25 discloses a performance management system/method/**computer-readable storage** medium implementing the same functionality, Vos teaches a performance management system/method/and carrier medium, comprising:

a database server comprising a plurality of database objects, wherein each of the plurality of database objects comprises an aggregation of store data (column 2, lines 9-16, wherein the database management system and method collect statistics and wherein statistics relating to operation of database may be collected, wherein the database comprises one or more database objects, Vos); and

a performance warehouse, which stores performance data for the plurality of database objects (column 3, lines 19-29 and column 11, lines 28-33, respectively, Vos);

wherein the performance management system is **configured** to:

detect a performance problem in the database server (columns 1 and 2, line 66 and lines 1-2, wherein the object advisor may identify conditions that cause performance or availability problems in database objects, Vos);

identify a problematic database object of the plurality of database objects using the performance data for the plurality of database objects, wherein the problematic database object is related to the performance problem (columns 2 and 3, lines 54-67 and lines 1-6, wherein the statistics relating to operation of a database may be collected wherein the database comprise one or more database objects, and wherein characteristics of the database objects may be determined, and actions to be performed, either automatically based on based characteristics of the database objects, and a scheduling for performing the actions on the database objects maybe determined based on activity level statistics, wherein actions my be performed on the database objects on the schedules, wherein the performing the actions on the database objects may be confirmed, and the result of the actions on the database objects may be analyzed or monitored, Vos); and

tune the problematic database object to improve performance of **access to the stored data in** the database server (column 3, lines 30-41, wherein recommends changes in a physical characteristics of an object and partition changes, wherein statistics are collected relating the operations, wherein a recommendation of a modification to one or more database objects, wherein modifications can include new partition, a new key, or another physical change to one of the database objects and column 3, lines 52-53, wherein a change may be detected in the characteristics or usage of at least one database objects, wherein tuning by definition is defined to be

the process of selecting the appropriate genetic operators and their respective parameters to suit a problem, which corresponds to wherein "a recommendation of a modification to one or more database objects, Vos).

Claims 2, 10, and 18:

Regarding dependent Claims 2, 10, and 18, most of the limitations of these claims have been noted in the rejection to Claims 1, 9, and 17. In addition, Vos teaches wherein the tuning the problematic database object to improve performance of **access to the stored data in the database server computer system comprises the problematic database object from nonvolatile storage to volatile storage for improved speed of access** (column 5, lines 16-20, wherein a non-volatile medium and a volatile medium is defined, Vos).

Claims 3, 11, and 19:

Regarding to dependent Claims 3, 11, and 19, most of the limitations of these claims have been noted in the rejection to Claims 1, 9, and 17. In addition, Vos teaches wherein the tuning the problematic database object to improve performance of **access to the stored data in the database server computer system comprises creating a new access path to the problematic database object** (column 8, lines 48-51, wherein object statistics collector includes space and access-path statistics that can be placed in the DB2 catalog in lieu of RUNSTATS data and column 10, lines 41-48, wherein the JCL generation, i.e., job control language, component may be used to create the JCL and jobs required to execute the workload, and the JCL that can be managed by a scheduling component, wherein automatically the creation of JCL may reduce the level experience required by the user and ensure the reliable execution of maintenance task, Vos).

Claims 4, 12, and 20:

Regarding dependent Claims 4, 12, and 20, most of the limitations of these claims have been noted in the rejection to Claims 1, 9, and 17. In addition, Vos teaches wherein tuning the problematic database object to improve performance of **access to the stored data in** the database server computer system **comprises moving the problematic database object from heavily loaded storage components to less loaded storage components** (column 13, lines 45-54, wherein the compression analysis component of the object advisor optimization solution may determine the effectiveness of existing data compression and if not enough compression is received, or processing costs are too high, compression may be turned off, which corresponds to “moving the problematic database object from heavily loaded storage components to less loaded storage components”, and the object advisor may analyze statistical column information and recommend or enable compression for objects that would benefit and the object advisor may then determine the most effective compression algorithm for specific objects based on the data contained in the database and how it is used, Vos).

Claims 5, 13, and 21:

Regarding dependent Claims 5, 13, and 21, most of the limitations of these claims have been noted in the rejection to Claims 1, 9, and 17. In addition, Vos teaches wherein the performance data comprises an I/O wait (column 5, lines 36-47, respectively, Vos).

Claims 6, 14, and 22:

Regarding dependent Claims 6, 14, and 22, most of the limitations of these claims have been noted in the rejection to Claims 1, 9, and 17. In addition, Vos teaches wherein the performance data comprises an application lock wait (column 13,

Art Unit: 2163

lines 5-18, wherein the object advisor optimization solution may identify object partitions that are approaching a maximum data set size and the object advisor may analyze the number and size of existing partitions and determine whether to spread the data across existing data sets or whether a new data set should be created to hold a portion of the data, wherein a column distribution statistics may also be analyzed to calculate a new key range of data, **wherein** - "a new data set should be created to hold a partition of the data" is interpreted to correspond to "an application lock wait", Vos).

Claims 7, 15, and 23:

Referring to dependent Claims 7, 15, and 23, most of the limitations of these claims have been noted in the rejection to Claims 1, 9, and 17. In addition, Vos teaches wherein the performance data comprises a resource contention (column 13, lines 20-29, wherein the object advisor's optimization solution may identify datasets that should not be located on the same DASD volumes, wherein these datasets may be physically related, logically related, or otherwise heavily accessed datasets and information may be recorded in the object advisor repository to indicate where specific dataset should or should not be placed and this information may be recorded and used when datasets are redefined during REORG or other processes and wherein the object advisor may also relocate datasets that are currently in contention on a DASD device, Vos).

Claims 8, 16, and 24:

Regarding dependent Claims 8, 16, and 24, most of the limitations of these claims have been noted in the rejection to Claims 1, 9, and 17. In addition Vos teaches correlating the collected performance data to specific database objects of the plurality of database objects (column 8, lines 30-34, wherein the usage monitor may

Art Unit: 2163

log the collected information to an OA - i.e., object advisor, data usage statistics table 636 and the object usage analysis component 606 may be used to correlate the usage data relative to object-level performance metrics, Vos).

Prior Art of Record

(The prior art made of record and not relied upon is considered pertinent to applicant's disclosure)

1. Risch (US Patent No. 5,471,629)
2. Guay et al (US Patent No. 6,553,369)
3. Lindskog et al (US Patent No. 6,370,572)
4. Vos et al (US Patent No. 6,944,630)

Examiner Response to Applicant Arguments

Applicant's arguments filed on 5/2/2007, with respect to the rejected claims in view of the cited references have been considered but are moot in view of applicant's amended claims necessitate new ground(s) of rejection.

Art Unit: 2163

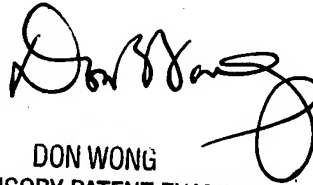
Point of Contact

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Helene R. Rose whose telephone number is (571) 272-0749. The examiner can normally be reached on 8:00am- 4:30 pm M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Don Wong can be reached on (571) 272-1834. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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July 8, 2007


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